

Exhibit 102

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Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 MASTER DOCKET 18-MD-2865 (LAK)
4 CASE NO. 18-CV-09797

5 IN RE:
6 CUSTOMS AND TAX ADMINISTRATION OF
7 THE KINGDOM OF DENMARK
8 (SCATTEFORVALTNINGEN) TAX REFUND
9 SCHEME LITIGATION

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11
12 C O N F I D E N T I A L

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15 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
16 EXAMINATION OF
17 MICHAEL BEN-JACOB

18 DATE: October 11, 2021

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25 REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 23

1 representation of any of your former clients
2 where you said, "No, you should not do this?"

3 MR. DEWEY: Objection.

4 A With respect to the U.S. advice
5 that we were asked to render, I believe that
6 there were strategies or thoughts as to how
7 the ownership should be held or how payments
8 should be made among the clients or their
9 entities or their pension plans where the
10 appropriate lawyers with that substantive
11 area of expertise, typically on the pension
12 side, advised the clients that they should
13 not do whatever was at issue.

14 Q Did you ever provide any assurance
15 to any of your former clients that it was
16 appropriate for a plan to represent to
17 Denmark that the plan was the beneficial
18 owner of Danish shares or Danish dividends?

19 MR. DEWEY: Objection.

20 A Can you please explain your
21 question?

22 Q You understood that the plans that
23 were set up in this ex-dividend strategy were
24 going to be making reclaim applications to
25 Denmark.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 24

1 Correct?

2 A Yes, I understood that.

3 Q Did you ever provide any assurance
4 to any of your former clients that those
5 plans could appropriately represent that they
6 were the beneficial owners of Danish shares
7 or Danish dividends?

8 MR. DEWEY: Objection.

9 A My firm advised that for U.S. tax
10 and pension law purposes, the pension plans
11 that engaged in the trading were -- could
12 appropriately represent that they were the
13 owners of the shares, again, from a U.S. tax
14 and pension law perspective.

15 Q That the plans could appropriately
16 represent, for U.S. tax purposes, that they
17 were the beneficial owners of the shares.

18 Is that correct?

19 A That's correct.

20 Q And to whom were the plans
21 representing, for U.S. tax purposes, that
22 they were the beneficial owners of the
23 shares?

24 A Well, for example, to the IRS and
25 to -- from a regulatory perspective, to the

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Michael Ben-Jacob - October 11, 2021

Page 26

1 Q Outside of U.S. tax and U.S. -- you
2 said "regulatory."

3 Is that U.S. regulatory?

4 A Yes, U.S. regulatory.

5 Q Did you provide any advice with
6 respect to any of the ex-dividend strategy
7 outside of the area of U.S. tax and U.S.
8 regulatory?

9 MR. DEWEY: Objection. You,
10 Mr. Ben-Jacob, or his firm?

11 Q You or your firm?

12 A Well, to the best of my
13 recollection, there may be something that I'm
14 missing. But I do recall that there were
15 some German law advice that my firm's German
16 office provided.

17 Q Anything else?

18 A I -- I don't recall anything else.

19 Q Do you believe that in connection
20 with the ex-dividend strategy which you
21 assisted your clients, do you believe that
22 they told you everything that you needed to
23 know about those transactions?

24 MR. DEWEY: Objection.

25 A This group of clients is a very

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Michael Ben-Jacob - October 11, 2021

Page 27

1 sophisticated group of clients --
2 accountants, lawyers, MBAs -- that I had a
3 longstanding relationship with. I
4 represented any number of them, you know,
5 five or six or seven years by the time this
6 transaction took place.

7 And I believed then, and I believe
8 now that they told us all the relevant facts
9 and information related to the trading. And
10 I relied on them on the basis of that
11 relationship, and their honesty and
12 integrity, as evidenced through the five
13 years or six years that I represented them,
14 and their expertise -- their own expertise in
15 U.S. tax and related matters.

16 Q So do you believe they told you
17 everything that you needed to know about the
18 transactions on which you were engaged to
19 assist?

20 MR. DEWEY: Objection.

21 A We relied on them for the
22 information surrounding the transactions, and
23 I believe they told us everything that we
24 needed to know.

25 Q Do you believe they withheld any

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 28

1 information from you that you needed to know?

2 MR. DEWEY: Objection.

3 A I have no reason to think that they
4 withheld any information.

5 Q When they asked you to assist them
6 with the transaction, did they explain to you
7 each step of the proposed transaction?

8 MR. DEWEY: Objection. In Denmark?

9 Bill, can we be a little bit more
10 specific?

11 Q As a general matter -- if there are
12 some exceptions, please let me know.

13 But as a general matter, this
14 sophisticated group of clients, when they
15 engaged you to assist with the transaction,
16 did they explain to you specifically and in
17 detail each step of the transaction?

18 MR. DEWEY: Objection.

19 A I recall conversations with some of
20 the group of clients where they explained to
21 me at a high level the general concepts
22 underpinning the transaction.

23 Q Was there ever any occasion where
24 you felt that your clients had failed to tell
25 you any significant step or any insignificant

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Page 36

1 Exhibit 4484?

2 MR. MAGUIRE: Mark 4484.

3 (Whereupon the above mentioned was
4 marked for identification.)

5 Q Let me know when you've had a
6 chance to review the document.

7 A (Witness reviewing.)

8 I've read the document.

9 Q Is that your signature on the third
10 page?

11 A That is my signature, yes. It's
12 the second page.

13 Is there a third page?

14 Q I'm sorry. Second page. You're
15 right.

16 A Okay. Yes, that is my signature.

17 Q Did you assist in transactions
18 involving Ezra Academy?

19 MR. DEWEY: Objection.

20 A My firm provided advice with
21 related transactions involving our clients,
22 or what you're calling former clients, in
23 Ezra Academy.

24 Q And were you involved in providing
25 those services?

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Michael Ben-Jacob - October 11, 2021

Page 57

1 A I don't have a recollection of this
2 e-mail, so I can't say what I understood at
3 the time.

4 Q Well, separately from this e-mail,
5 did you have an understanding that in 2014,
6 your former clients wanted to set up plans to
7 participate in Danish trading?

8 MR. DEWEY: Objection.

9 A (Witness reviewing.)

10 That was my general understanding.

11 Q And did you understand that
12 Sanjay Shah and Solo had allocated a certain
13 number of plans to your former client group?

14 MR. DEWEY: Objection. In Denmark,
15 Bill?

16 Where are we?

17 MR. MAGUIRE: Yes.

18 A I was not familiar with the
19 business arrangements between Sanjay Shah and
20 the former clients except at a very high
21 level. So I'm not familiar with the point
22 that you've raised.

23 Q Did your former clients ever
24 indicate to you that the reason they wanted
25 to set up plans was because they wanted to

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 58

1 use their allocation from Solo and
2 Sanjay Shah?

3 MR. DEWEY: Objection.

4 A The business arrangements between
5 my former clients and Sanjay Shah were
6 negotiated directly between them, among them.
7 I nor -- to the best of my knowledge, nor my
8 firm was involved in those discussions.

9 Q Did you ever ask your former
10 clients what were the business arrangements
11 between them and Solo Capital?

12 A To the best of my recollection, the
13 only aspect that I can recall of those
14 business arrangements -- of those business
15 arrangements had to do with a general
16 allocation of the dividend reclaims as a
17 matter of percentages between the former
18 clients and Sanjay's group.

19 Q That was the general allocation of
20 what, 66 percent to 34 percent?

21 A It was -- I don't recall
22 specifically, but it was something like that.

23 MR. MAGUIRE: Tom, I think you
24 wanted to take a break at this stage?
25 So we don't we take -- how long do you

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 64

1 is what you're asking.

2 Q You're saying you did not have that
3 understanding?

4 A I would not have had that
5 understanding, correct.

6 Q Can you turn, sir, to Exhibit 4494?

7 MR. MAGUIRE: Mark 4494.

8 (Whereupon the above mentioned was
9 marked for Identification.)

10 A Yeah, I have it here. Again bear
11 with me as I look through it.

12 (Witness reviewing.)

13 Q My only question, sir, about this
14 e-mail is whether this is one on which you
15 were copied from Adam LaRosa on or about
16 May 11, 2013?

17 A (Witness reviewing.)

18 The top e-mail in the exchange is
19 dated May 11, 2013. It's from Adam LaRosa,
20 and in the CC, I confirm, it lists my e-mail
21 address.

22 Q Now, you were involved in questions
23 that arose concerning FBAR reporting by your
24 former clients.

25 Correct?

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Michael Ben-Jacob - October 11, 2021

Page 65

1 MR. DEWEY: Objection.

2 A Just to be clear, are you asking me
3 that in relation to this document, or
4 generally?

5 Q Generally?

6 A Generally, yes, that's correct.

7 Q And in connection with that, your
8 former clients sent financial information to
9 you and your firm?

10 MR. DEWEY: Objection.

11 A I believe that's correct.

12 Q Attached to this e-mail is an
13 account for Mill River Capital Pension Plan.

14 Do you see that?

15 A I do.

16 Q And if you look at the first page,
17 you'll see this is an account from
18 Solo Capital?

19 A (Witness reviewing.)

20 The Solo Capital's logo appears at
21 the top right of the page, yes.

22 Q And you'll see, in the middle of
23 the page, there's an "Account Financial
24 Summary?"

25 A Well, are you talking about the box

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 66

1 right under the address?

2 MR. DEWEY: Want me to direct him,
3 Bill?

4 Q Right under the address, there's a
5 box of --

6 A Oh, there it is. Sorry. Yes, I
7 see the words "Account Financial Summary."

8 Q Yeah. And then, just below that,
9 on the left-hand side, you'll see "Open Cash
10 Balance."

11 Do you see that?

12 A Yes.

13 Q And it shows a zero open cash
14 balance in Euro kroner and Euro base?

15 A I see that, yes.

16 Q Just below that, you see the cash
17 equity settlement.

18 Do you see that?

19 A I do.

20 Q And that provides a purchase price
21 that's just over 849 million kroner?

22 A I don't know what the words "cash
23 equity settlement" mean, so I can't speak to
24 whether that figure speaks to a purchase
25 price or something else.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 67

1 Q You have no understanding as to
2 whether that amount is the purchase price of
3 Danish equities.

4 Is that correct?

5 A I don't know what the words "cash
6 equity settlement" mean. I know what the
7 words "purchase price" means.

8 I don't know what the words "cash
9 equity settlement" means.

10 Q If you look further down, about
11 five or six lines below the cash equity
12 settlement words, you'll see the words "stock
13 loan cash original."

14 Do you see that?

15 A I do.

16 Q And you understood that the plans
17 would be financing their purchases of equity
18 by entering into stock lending agreements.

19 Is that correct?

20 MR. DEWEY: Objection.

21 A I understood that the plans were
22 entering into stock lending agreements. I
23 did not understand the function of those
24 lending agreements in the overall
25 transaction.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 68

1 Q You'll see that the amount of the
2 stock loan cash original here is the exact
3 same amount as the cash equity settlement.

4 Do you see that?

5 A Well, one is a negative number.
6 The other is a positive number.

7 Q And the actual numbers themselves
8 are identical?

9 A Yes, I do see that.

10 Q So did you understand that the
11 plans were paying for Danish shares with cash
12 they obtained from a stock lending agreement
13 to cover the full amount of the stock
14 purchase?

15 MR. DEWEY: Objection, asked and
16 answered.

17 A I understood generally that there
18 were financing purchases. I did not have an
19 understanding at the time, or now, as to how
20 that how those financing arrangements were
21 made.

22 Q Did you understand that the plans
23 were beginning their trading with zero cash
24 balances?

25 A I don't recall one way or the

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 69

1 other.

2 Q Now, you'll see at the bottom of
3 the page or close to the bottom of the page,
4 there's a reference to "cash movements?"

5 A Yes, I see that.

6 Q And you'll see that's zero?

7 A Yes, it says zero.

8 Q If you turn to the last page of the
9 document, sir -- or actually, let me back up.
10 Before we go to the last page, we can also
11 look at the page ending in the Bates 594.

12 A I think I have the right page.

13 Q Do you see in the center, at the
14 top, it says "Stock Loan Transaction
15 Statement?"

16 A Yes.

17 Q And right below those words is the
18 word "counterparty," and the counterparty in
19 every case is Aquila (Cayman)?

20 A I may be on the wrong page. I
21 don't see the words "counterparty."

22 THE WITNESS: Do you see it?

23 MR. DEWEY: Do you want me to
24 direct him, Bill?

25 A Wait. I'm sorry. Here. It's in

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 70

1 the columns right here.

2 I have it here, yes.

3 "Counterparty," yes.

4 Q Do you see Aquila (Cayman) is the
5 stock loan counterparty?

6 A I do.

7 Q What did you know about
8 Aquila (Cayman)?

9 A I had a general recollection that
10 that was an entity somehow associated with
11 Solo Capital.

12 Q And what was the -- where did you
13 get the understanding?

14 A It's just a vague recollection that
15 I have. I can't recall specifically.

16 Q You don't recall who told you what
17 the relationship was with Solo Capital?

18 A I do not.

19 Q And do you understand what was the
20 relationship? How were Solo and
21 Aquila (Cayman) related?

22 A I do not recall.

23 Q Did Sanjay Shah control Aquila
24 capital?

25 MR. DEWEY: Objection.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 71

1 A I do not recall one way or the
2 other.

3 Q If you could turn to the last page
4 of the document?

5 A I have it.

6 Q There's a table at the bottom?

7 A Yeah. I can't see it, but yes.

8 Q It's hard to read. Only thing I
9 want you to focus on is the last line.

10 Do you see where it says "variation
11 margin?"

12 A Yes, I see those words.

13 Q What is "variation margin?"

14 A I do not know.

15 Q Can you turn, sir, to Exhibit 4495?

16 MR. MAGUIRE: Mark 4495.

17 (Whereupon the above mentioned was
18 marked for Identification.)

19 A Okay. I have it here.

20 Q Is this an e-mail that Adam LaRosa
21 sent to you on or about June 4 of 2013?

22 A So bear with me as I go through the
23 whole exhibit.

24 (Witness reviewing.)

25 I skimmed through this. What is

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 72

1 your question?

2 Q So you received this from Adam
3 LaRosa on or around June 4 of 2013?

4 A Well, I don't have any specific
5 recollection of this e-mail exchange, but the
6 e-mail indicates it was sent to me on that
7 date.

8 Q And Mr. LaRosa says he's sending
9 you "the actual cash balances for 2012."

10 Do you see that?

11 A I do.

12 Q So if we go to the first one of
13 this page, you'll see it's an e-mail, again
14 from Custody@Solo to Adam@Mill River Capital.

15 Do you see that?

16 A I do.

17 Q And it gives the Mill River cash
18 balances for 2012.

19 Do you see that?

20 A I do.

21 Q And you'll see that the balances
22 are all negative, except for two, which is
23 the refund from Denmark.

24 Do you see that?

25 A I do.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 73

1 Q Now if you turn to the next page,
2 you'll see a similar balance from Solo for
3 Lion Advisory.

4 Right?

5 A (Witness reviewing.)

6 Well, I see an e-mail from
7 Custody@Solo, May 23, 2013 at 1039. I'm not
8 sure -- oh, Lion Advisory, there it is.

9 Yes, that's Adam LaRosa's e-mail
10 address, yes.

11 Q And again, you'll see that each of
12 the balances here is negative except for the
13 refund money from Denmark.

14 Correct?

15 MR. DEWEY: Objection.

16 A That's what it seems to say, yes.

17 Q If we turn to the next page, we'll
18 see the balance from Solo for California
19 Catalogue Company.

20 Do you see that?

21 A Yes.

22 Q And again, you'll see all of the
23 cash items are negative except for the refund
24 from Denmark?

25 MR. DEWEY: Objection.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 74

1 A Yes, I see that.

2 Q And if we turn to the next page,
3 you'll see the cash statement from Solo for
4 the Delvian plan.

5 Right?

6 A Yes.

7 Q And all the cash balances again are
8 negative except for the refund money from
9 Denmark.

10 Right?

11 MR. DEWEY: Objection.

12 A Yes, I see that.

13 Q Did you ever see any positive cash
14 balance for any plan other than the
15 withholding tax refund from Denmark?

16 MR. DEWEY: Objection.

17 A (Witness reviewing.)

18 I don't recall one way or the
19 other.

20 Q Sir, if you could turn to Exhibit
21 4496?

22 MR. MAGUIRE: Mark 4496.

23 (Whereupon the above mentioned was
24 marked for Identification.)

25 A I have it here.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 81

1 This was a financial statement
2 prepared by what appears to be Ron Carlin, an
3 accounting firm. And I can't speak to why he
4 used any particular term of art.

5 Q Mr. Carlin was working for Mr. Van
6 Merkensteijn.

7 Right?

8 A To the best of my understanding,
9 yes.

10 Q And Mr. Van Merkensteijn, you knew,
11 had directed that the books refer to reclaims
12 income as "trading income."

13 Right?

14 MR. DEWEY: Objection.

15 A I'm sorry. Are you saying that's
16 in the e-mail exchange somewhere? Did I miss
17 that? Are you -- you're saying.

18 Q Do you understand that?

19 MR. DEWEY: Objection.

20 A Again, I don't have a recollection
21 and I can't say one way or the other.

22 Q You understood that Solo had a
23 services fee?

24 A I generally understood Solo as
25 being paid a fee, a services fee, yes.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 82

1 Q That was around 60 or 66 percent of
2 the reclaim?

3 A That's my general recollection.

4 Q And here, the trading services fee
5 is about 60 percent of the trading income?

6 A On approximate, looking at the
7 numbers, it looks to be about that.

8 Q Do you understand that Mr. Van
9 Merkensteijn had directed Mr. Carlin to style
10 the Solo reclaims fee as a trading services
11 fee?

12 MR. DEWEY: Objection, asked and
13 answered.

14 A I can't say what conversations were
15 had between Mr. Van Merkensteijn and
16 Mr. Carlin. You'd have to ask them.

17 Q Did you understand from the e-mail
18 communications that you had seen between
19 Mr. Van Merkensteijn and his colleagues that
20 he had asked them specifically to change the
21 descriptions in the accounts and the books of
22 the Azalea plan called "reclaim services fee"
23 a "trading services fee?"

24 MR. DEWEY: Objection.

25 A I'm sorry. You had you said that's

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 85

1 A I don't recall conversations
2 surrounding this exchange one way or the
3 other.

4 Q Sir, if you could turn to Exhibit
5 4498?

6 MR. MAGUIRE: Mark 4498.

7 (Whereupon the above mentioned was
8 marked for Identification.)

9 A Yes, I have it.

10 Q Is this an e-mail you received from
11 Matthew Stein on or about October 12, 2012?

12 A (Witness reviewing.)

13 That is the heading of the e-mail,
14 yes.

15 Q In it, Mr. Stein says, "Michael,
16 please forward to Woody."

17 Do you have an understanding as to
18 who "Woody" was?

19 A Yes. That's a nickname used for
20 Arthur Woodard, one of the pension law
21 partners at Kaye Scholer at the time.

22 Q And attached to the e-mail is a tax
23 reclaim advisory services agreement.

24 Do you see that?

25 A (Witness reviewing.)

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 86

1 Yes, I see that.
2 Q If you turn to Page 219500?
3 A I have that page here.
4 Q And you'll see a schedule?
5 A I do see a schedule.
6 Q And it gives a percentage split on
7 a refund amount and the percentage of
8 67.5 percent?

9 A That's what the document says, yes.
10 Q Do you understand that was the
11 percentage of the reclaim that would be paid
12 to Ganymede?

13 MR. DEWEY: Objection.

14 A Well, it's titled "Relevant
15 Percentage" which appears to be a defined
16 term in the document, and the document speaks
17 for itself as to what it means.

18 Q Do you understand that was the
19 amount that the plan would pay to Ganymede?

20 A Again, I don't have a specific
21 recollection of this document, so I cannot
22 say one way or the other what my thinking was
23 at the time other than to say that the
24 document speaks for itself as to what the
25 definition of "relevant percentage" is.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 87

1 Q And is it your -- and is it your
2 understanding today that under the plan's
3 agreements with Ganymede, that pursuant to
4 this agreement, the plan would pay
5 67.5 percent to Ganymede?

6 MR. DEWEY: Objection, vague.

7 A I can't say today what this
8 agreement entails. I would have to read it
9 and fully absorb it and I probably wouldn't
10 understand any of it in any event.

11 It's not in my area, as I mentioned
12 before.

13 Q Did you read the tax reclaim
14 advisory services agreement at the time?

15 A I don't recall one way or the
16 other.

17 Q Was it your understanding that all
18 of the plans entered into a tax reclaim
19 advisory services agreement with Ganymede?

20 A I don't recall. I don't recall one
21 way or the other.

22 Q Who is Ganymede?

23 A Again, I have a vague recollection
24 that is an entity that had some association
25 with Solo Capital and Sanjay Shah.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 89

1 A I don't recall.

2 Q Did Ganymede provide the services
3 for any plans?

4 A So you just dropped out.

5 Can you repeat the question,
6 please?

7 Q Did Ganymede provide any services
8 to the plans?

9 A I don't recall one way or the
10 other.

11 Q You'll see the "services" is
12 defined as "tax reclaim advisory services?"

13 A I see those words on the page, yes.

14 Q What are they?

15 MR. DEWEY: Objection.

16 A I don't know.

17 Q What services did Solo provide to
18 the plans?

19 A I have a general understanding that
20 Solo advised as to the selection of
21 securities to purchase, generally assisted or
22 facilitated in obtaining financing, and
23 executed the trades.

24 Q And how did the plans pay Solo for
25 those services?

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 90

1 A My general understanding was that
2 there was a division of the profits from the
3 trades, approximately two-thirds, one-third.

4 Q Two-thirds to Solo and one-third?

5 A To the plan, correct.

6 Q And did the plans then pay that
7 two-thirds to Solo or did they pay that
8 two-thirds to Ganymede?

9 MR. DEWEY: Objection.

10 A I don't know.

11 Q Did you ever discuss -- did anyone
12 ever inform you that the payments for Solo's
13 services would be made to Ganymede?

14 A Again, our firm and my own
15 involvement was limited to the U.S. tax and
16 pension law issues that the clients asked us
17 to look into, and again, regulatory and some
18 administrative matters, as I had mentioned
19 before.

20 We were not involved with the
21 negotiations with Solo. We were not involved
22 in the flow of funds. We were not involved
23 in the trading.

24 So I have no information with
25 respect to the questions you're asking.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 98

1 okay?

2 A Sure --

3 MR. DEWEY: Or you can just say
4 "you" when you mean Mr. Ben-Jacob or the
5 firm.

6 A In this matter, actually, as is
7 most of the matters we're discussing, it was
8 other attorneys in my firm that did the
9 lion's share of the work and I've helped
10 coordinate. And that is true of this
11 particular memo as well.

12 Q If we turn to the second page,
13 there's a Section B called "Trading and
14 Related Operations."

15 Do you see that?

16 A Yes.

17 Q That carries over to the top of the
18 next page where the first full sentence says,
19 "We understand that," and there's a couple of
20 little Roman Numerals there.

21 When you say, "we understand that,"
22 what was the basis for that understanding?

23 A Representations made to us, meaning
24 to the firm, by the client or the client
25 group.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 99

1 Q But was there any other basis for
2 that statement?

3 A (Witness reviewing.)

4 Are you talking about the first
5 numerette, or the second numerette, or both?

6 Q Both. Because I think we
7 understand it has two numerettes there, so.

8 A So we understand that, one, Solo
9 provided the entire structure of the trading
10 strategy to the trustees. So I believe that
11 was entirely from the clients. Number two,
12 the trustees had -- I'm sorry.

13 Number two, the trustees had little
14 or no ability to negotiate the financial
15 terms of the arrangement, which were
16 basically the same or more favorable to the
17 Michelle plan as arrangements that existed
18 between Solo or other providers which engaged
19 in this trading strategy.

20 I vaguely recall that there were
21 other providers. A name that occurs to me is
22 Duet, if I have it right. I'm not getting
23 the full correct name, but Duet.

24 And there were discussions with
25 Duet as to them providing similar services

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 100

1 that Solo provided and their fees were equal
2 to or more than Solo's. So we did have some
3 independent information about what other
4 service providers were charging for similar
5 services.

6 Q Anyone other than Duet?

7 A I can't recall one way or the
8 other.

9 Q You don't recall any other provider
10 other than Duet?

11 A Not that I can recall.

12 Q Do you recall what the fees were
13 that -- the fee arrangements that Duet
14 required?

15 A Yeah, I can't say for sure. My
16 recollection is very vague, but I seem to
17 think it was, on an order of magnitude, 70 or
18 75 percent of the profits from the
19 transactions.

20 Q Then, with respect to the first
21 Roman numerette where Solo provided the
22 entire structure of the trading transaction,
23 what did that mean?

24 MR. DEWEY: Objection.

25 A I can't say specifically what the

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 101

1 phrase "entire structure" refers to here.

2 Q Did you understand that Solo
3 recommended each step in the transactions?

4 A That was my -- when you say "each
5 step," can you elaborate a little bit more
6 what you mean?

7 Q Solo recommended all the purchases?

8 A My understanding was that Solo
9 provided a list of, you know, suggested
10 purchases, and that the clients -- or I
11 should say the pensions then selected which
12 they wanted to pursue.

13 Q And solo recommended all of the
14 stock loans?

15 A Again, it was my general
16 understanding that Solo facilitated and made
17 introductions to financial and other lending
18 institutions.

19 Q Solo recommended all the hedge
20 transactions?

21 MR. DEWEY: Objection.

22 A That, I don't recall one way or the
23 other.

24 Q Solo recommended the specific
25 Danish security that the plans would buy?

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 103

1 MR. DEWEY: Objection.

2 A I don't know one way or the other.

3 Q Did you ever do any diligence on
4 Solo Capital?

5 A Can you elaborate by what you mean
6 by "diligence?"

7 Q Any due diligence?

8 A Well, "due diligence" is a pretty
9 vague term in my practice.

10 Can you tell me a bit more by --
11 what you mean?

12 Q Any investigation, research of any
13 kind, to see whether -- what Solo was, what
14 it was capable of doing, what its financial
15 strength was, what its credit ratings were,
16 what its financial statement said?

17 Anything that -- along those lines?

18 A So I do generally recall having
19 conversations along those lines with the
20 clients. And they -- again, as we've
21 mentioned before, sophisticated business
22 people, accountants and lawyers indicated
23 they were doing their own due diligence.

24 I understood that they went to
25 London, met with Solo representatives. I

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 104

1 don't know with whom they met. Stayed there
2 for a number of days.

3 I understood -- I have a vague
4 recollection that they had some sort of
5 report commissioned. I can't remember the
6 nature of the report, but some kind of --
7 maybe it was a -- some business report or a
8 certain business investigator.

9 I can't remember the details, but
10 they had a third party investigate the bona
11 fides of Solo and Mr. Shah. And so we relied
12 on our clients investigation and due
13 diligence.

14 Q So you, yourself, or your firm did
15 not do any due diligence of Solo Capital?

16 A To the best of my knowledge, no.

17 Q Did your client group ever share
18 findings from their due diligence
19 investigation?

20 MR. DEWEY: Objection.

21 A Yes, I have a general recollection
22 they certainly reported orally to me and
23 perhaps to others in my firm, I don't know.
24 But certainly we had conversations to the
25 effect that, you know, Mr. Shah appeared to

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 105

1 be, you know, a reputable businessperson,
2 operating a licensed and properly regulated
3 financial institution out of the U.K., had a
4 pedigree of having worked with or been an
5 executive with major -- other major financial
6 institutions.

7 And I believe, as I said, there was
8 some report that I vaguely remember them
9 obtaining that I may have seen, but I can't
10 recall if they gave me a copy, but that
11 ultimately concluded that Mr. Shah and
12 Solo Capital were a bona fide and reputable
13 financial institution.

14 Q Did they ever tell you what Solo
15 Capital's ratings were?

16 A I don't recall specific
17 conversations one way or the other about
18 credit rating.

19 Q Did they ever provide you with
20 Solo's financial statements?

21 A I don't recall one way or the other
22 receiving financial statements of Solo.

23 Q Did they ever tell you what the
24 financial wherewithal or strength of Solo
25 Capital was?

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 109

1 As I sit here now reviewing the
2 memo, I don't -- I can't say I understand it
3 necessarily the same way. "Simultaneously"
4 refers back to the prior paragraph that lists
5 ten things that occurred.

6 I don't know as I sit here now to
7 which one or all of those things the word
8 "simultaneously" refers to.

9 Q Let's leave aside this memo.

10 Did you have an understanding that
11 the plans bought the shares with money that
12 they got from a securities lending
13 arrangement?

14 A I can't recall one way or the other
15 the details of the financing the plans
16 arranged.

17 Q Did anyone tell you that in doing
18 these transactions, the plans would be
19 financing 100 percent of the purchase price?

20 A I do generally recall having
21 conversations where it was explained that the
22 plans would be financing all of the purchase
23 price.

24 Q So you understood that the plans
25 themselves would not need to have any money

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 110

1 in order to buy the Danish shares?

2 MR. DEWEY: Objection.

3 A I understood, generally, at the
4 time that the plans would be able to finance
5 their purchase of the Danish shares.

6 Q 100 percent?

7 A That was my general understanding,
8 yes.

9 Q So they would not need any of their
10 own cash in order to pay for any of the
11 Danish shares?

12 A That was my general understanding.

13 Q If we look at the next paragraph,
14 it starts, "As noted, while the decisions as
15 to which securities -- while the decisions as
16 to which securities to purchase are solely
17 within the purview of the Michelle plan
18 trustees, they did take into account the
19 recommendations of Solo."

20 Do you see that?

21 A I do.

22 Q What are the recommendations of
23 Solo that are referred to there?

24 A I believe this refers to what I
25 mentioned earlier, that Solo would, through

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 112

1 there's a paragraph that starts, "Under the
2 custodial agreement with Solo?"

3 A Yes, I see that paragraph.

4 Q It says, "The Michelle plan pays
5 fees to Solo as per the schedule attached to
6 the custodial agreement."

7 How did the -- let me take that
8 back. Go to the next sentence.

9 It says, "The documents for the
10 transaction indicate that of the gross amount
11 payable to the Michelle plan, the Michelle
12 plan retained approximately 34 percent and
13 the remaining 66 percent was paid to Solo."

14 Was that consistent with your
15 understanding?

16 A That was generally my
17 understanding, yes.

18 Q And did any documents provide that
19 payments would be made to Ganymede?

20 MR. DEWEY: Objection.

21 A I don't recall one way or the
22 other.

23 Q What documents provided that
24 payments would be made to Solo?

25 A I don't recall what documentation

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 113

1 was put into place one way or the other with
2 respect to payments to Solo.

3 Q Are you aware of any signed
4 agreement that provided that payments would
5 be made to Solo?

6 A I don't recall one way or the other
7 what documentation was put into place with
8 respect to payments to Solo.

9 Q Why did Solo simply recommend the
10 trades? Why did the plans not simply appoint
11 Solo as the investment manager?

12 MR. DEWEY: Objection.

13 A I have a general and somewhat vague
14 recollection that there was a U.S. side
15 securities law issue that other attorneys in
16 my firm who were assisting with the matter
17 pinpointed, and recommended instead that the
18 ultimate decision for trading be placed in
19 the hands of the pension plan trustees and
20 not with Solo.

21 Q Now, when you say, "the ultimate
22 decision," do you mean the decision as to
23 whether or not the plan would participate in
24 the transaction that Solo was recommending?

25 A I believe what I meant was the -- I

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 115

1 A I don't recall the specific nature
2 of the concern that they raised, only that
3 there was a concern, and that the way to
4 avoid the concern and be fully compliant from
5 a U.S. regulatory standpoint was to proceed
6 as we've described.

7 Q At the bottom of the page there's a
8 paragraph that says, "While the documents
9 provide that the 66 percent to Solo is a
10 quote, fee, unquote, to Solo, the
11 understanding of the parties at the time the
12 transaction was entered into was that Solo
13 and the Michelle plan were, instead,
14 effectively engaged in a partnership under
15 which the profits would be shared between
16 them under the above profit allocation, with
17 Solo being responsible for all of the
18 partnership's expenses."

19 Do you see that?

20 A I do.

21 Q Where that refers to the
22 "understanding of the parties" --

23 A Yes.

24 Q -- who is that referring to?

25 A (Witness reviewing.)

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 116

1 I believe the paragraph says that
2 refers to Solo and the Michelle plan.

3 Q And did you understand that was
4 fundamentally the business deal among your
5 client group and Solo, which was that there
6 would be a profit split with Solo of
7 approximately two-thirds at one-thirds
8 between their plans and Solo Capital?

9 MR. DEWEY: Objection.

10 A That was my general understanding.

11 Q And where you did get that
12 understanding from? Who gave you that
13 understanding?

14 A To the best of my recollection,
15 that was based on conversations with the
16 client group.

17 Q Did there come a time when the
18 profit split changed from about 66 percent,
19 34 percent, to a different split of
20 75 percent, 25 percent?

21 A I can't recall one way or the
22 other.

23 Q If we turn to the next page, 6,
24 this is a discussion of transactions with
25 qualified persons?

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 126

1 A With anyone.

2 Q Do you recall, sir, that your
3 former clients wanted your help in setting up
4 a number of partnerships, some 20 partnership
5 agreements in 2012 to 2013?

6 MR. DEWEY: Objection.

7 Q As many as a dozen in February of
8 2012?

9 A I don't recall the specific numbers
10 or the exact years, but I do generally recall
11 that during the trading period, a good number
12 of partnerships were requested to be formed.

13 Q Now, what was the business reason
14 for all this activity in organizing these
15 partnerships in that 2012-2013 period?

16 A I understood from the client group
17 that it had generally something to do with
18 their ability to trade on the Solo platform,
19 and that's what they indicated to me.

20 Q And in order to do that, did you
21 draft partnership agreements that could be
22 used for plans accessing that platform?

23 MR. DEWEY: Objection.

24 A To the best of my recollection, we
25 did assist in the drafting of related

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 128

1 A I do.

2 Q Now, was that generally the
3 approach to come up with a partnership
4 agreement that would work for all of the
5 partnerships?

6 MR. DEWEY: Objection.

7 A I believe and it's my general
8 recollection that, yes, we created a form of
9 partnership agreement with the general
10 intention that it would be used for each of
11 the pension plans.

12 Q Then, if we turn to the next page,
13 at the top, you'll see an e-mail from Adam
14 LaRosa to you dated December 5, 2012.

15 A December 5?

16 Q Yeah. It's at the top of the page
17 ending --

18 A Oh, here it is. It's the next
19 page.

20 Q -- 880?

21 A Yes, yes. I have it.

22 Q So the third sentence of
23 Mr. LaRosa's e-mail says, "We wanted each to
24 have perhaps only 5 percent interest, except
25 for Raubritter LLC Pension Plan, which should

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 129

1 have 10 percent."

2 Do you see that?

3 A I do.

4 Q And did you understand that with
5 respect to the friends and families plans,
6 the general rule was that the plan would have
7 a 5 percent interest in the partnership, and
8 95 percent would be with the other partners?

9 MR. DEWEY: Objection.

10 A So just to make sure I understand
11 you, can you explain what you mean by "the
12 friends and family plans?"

13 Q Did you understand that
14 Mr. Markowitz and Mr. Van Merkenstein and
15 Mr. Klugman brought in friends or family
16 members to sponsor plans and to participate
17 in the Solo trading?

18 A That was my general understanding,
19 yes.

20 Q And did you understand, with
21 respect to those plans, they would be
22 5 percent partners in partnerships with your
23 former clients?

24 A I don't recall the specific
25 allocation to those plans as opposed to other

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 130

1 plans called the client plans one way or the
2 other.

3 Q Do you recall the 5 percent -- the
4 issue of 5 percent, whether plans could have
5 a 5 percent interest in a partnership?

6 A I do generally recall that as being
7 a U.S. pension law issue, yes.

8 Q Mr. LaRosa says, a little further
9 down in the e-mail, "I believe there was some
10 tension around whether a 5 percent interest
11 was enough to get us comfortable."

12 Do you understand what that refers
13 to?

14 A I believe I do.

15 Q And what was that?

16 A To the best of my recollection,
17 there's the question -- there was a question,
18 a U.S. tax pension law question, surrounding
19 whether, if a plan was a partner in a
20 partnership, what percentage of the
21 partnership profits needed to flow to the
22 plan in order for the plan to be the
23 beneficial owner of the -- of the income that
24 came to the partnership.

25 Q How was that question addressed?

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 131

1 A I believe Arthur Woodard and
2 Kathleen Wechter spent some time considering
3 that issue.

4 Q And what was their conclusion?

5 A To the best of my recollection, I
6 believe they concluded that a 5 percent
7 interest -- I'm sorry. I can't recall,
8 actually, what they concluded.

9 Yeah, I don't -- I don't remember.

10 Q Do you recall any conclusion on the
11 subject of beneficial ownership by either
12 Mr. Woodard or Ms. Wechter?

13 MR. DEWEY: Objection.

14 A Yes. I generally recall that there
15 was, you know, discussion about the U.S.
16 pension law concept of beneficial ownership,
17 and that Mr. Woodard advised the clients as
18 to what he believed an appropriate percentage
19 would be for the pensions' ownership in the
20 partnership.

21 I just can't recall what percentage
22 that was.

23 Q Do you recall Kaye Scholer
24 concluding that the partnerships were the
25 beneficial owners of the securities for U.S.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 132

1 tax and regulatory purposes?

2 MR. DEWEY: Objection.

3 A I don't recall that being the
4 conclusion. I seem to recall that the
5 conclusion was that the pension plans were
6 the beneficial owners under U.S. pension law
7 rules and related tax rules.

8 But I can't say definitively.

9 Q And who are the people who reached
10 that conclusion on beneficial ownership?

11 A That conclusion would have been
12 Arthur Woodard and Kathleen Wechter.

13 Q Anyone else?

14 A None that I can remember right now.

15 Q Mr. LaRosa's e-mail notes that
16 Raubritter was issued 10 percent.

17 Why was Raubritter different?

18 A I don't know.

19 Q Sir, if you could turn to Exhibit
20 3107?

21 A Yes, I have it here.

22 Q If you turn to the second page of
23 the document, sir, Bates number at the bottom
24 right is 727, if you see an e-mail from Peter
25 Wells, dated January 11, 2013, on which

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 144

1 Kathleen Wechter, I can't remember which, to
2 the effect that the partnerships, in order to
3 properly sponsor plans under U.S. pension
4 rules, needed to have some permanency, and
5 not be created and then dissolved in quick
6 succession.

7 And so it was his advice that
8 although the trading may have ceased, they
9 should continue to operate the partnerships
10 and conduct business within the partnerships
11 for purposes of continuing to be compliant
12 with the pension plan rules.

13 Q And so you advised that your client
14 group should not terminate the partnerships,
15 even if there's no current business activity?

16 MR. DEWEY: Objection.

17 A That's what the e-mail says, yes.

18 Yes.

19 Q And you noted that "among the many
20 issues that have been addressed is that the
21 plans must have been informed with the
22 intention of embarking on a permanent or
23 long-term business enterprise."

24 What did that mean?

25 MR. DEWEY: Objection.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 148

1 know, I just don't remember how the division
2 worked.

3 Q Did you have an understanding at
4 the time?

5 A I don't recall what my
6 understanding was at the time one way or the
7 other.

8 Q Do you recall that the reclaim was
9 for the full amount of withholding tax that
10 had been withheld on Danish dividends?

11 MR. DEWEY: Objection.

12 A That was my general understanding.

13 Q And did you understand that the
14 Danish tax was 27 percent of the dividend?

15 A I can't recall now what my
16 understanding was then as to tax rate.

17 Q In any event, if an application was
18 successful and a plan got a full refund of
19 the withholding tax, then that would be paid
20 to the payment agent, which would pay the
21 money over to the plan.

22 Right?

23 A That's my general understanding,
24 yes.

25 Q And that refunded portion of the

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 149

1 Danish dividend would then be subject to
2 apportionment among the parties in accordance
3 with their agreement to split the profits
4 two-thirds, one-third, Solo and the plan?

5 MR. DEWEY: Objection.

6 A My understanding as to the best I
7 can recollect right now was that the refund
8 amount was part of the gross proceeds from
9 which expenses were deducted. And then,
10 again, and as I mentioned before, I don't
11 remember exactly how they came to their
12 ultimate division of two-thirds, one-third.

13 Q But without getting into the ins
14 and outs, you understood that, overall,
15 two-thirds of the profits were going to Solo
16 and one-third was going to the plan?

17 A That was my general understanding.

18 Q That's fine.

19 MR. MAGUIRE: Why don't we take a
20 break? How long -- let's go off the
21 record.

22 THE VIDEOGRAPHER: Stand by. The
23 time is 12:49 p.m. New York time and
24 we're going off the record.

25 (Lunch recess taken.)

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 151

1 How can I help you?

2 Q Sir, if we look at that Paragraph 3
3 at the top of the second page, it says, "We
4 will look further at the issue discussed at
5 the outset of the meeting as to how the
6 funding of the transaction anticipated to be
7 a loan impacts the pension plan's
8 representation on the forms that it is the
9 beneficial owner of the tax reclaim amounts."

10 Do you see that?

11 A I do.

12 Q Okay. Did you understand that in
13 making a reclaim, the pension plan would
14 represent on the application form seeking the
15 reclaim that it is the beneficial owner of
16 the tax reclaim amount?

17 A I have that general recollection,
18 yes.

19 Q And can you tell us how -- just
20 explain this issue? How did the funding of
21 the transaction impact that representation?

22 A I don't have a recollection of this
23 specific e-mail exchange nor the, you know,
24 specific issue that's alluded to here.

25 All this seems to say to me is

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 167

1 I don't have any more than my
2 general recollection at this time.

3 Q Did you see any problem with the
4 plans making a representation to Denmark that
5 they were the beneficial owners of shares
6 when they were legally obligated to pay
7 two-thirds of the reclaims to Solo?

8 MR. DEWEY: Objection.

9 A As I mentioned earlier, in
10 discussions with Jerome Lhote, he indicated
11 that he had taken advice from Danish counsel
12 and reported back to us, to me, that it was
13 appropriate to treat the pensions as the
14 beneficial owner for Danish law purposes.

15 Q You understand that this Exhibit
16 4500 is a Danish law opinion?

17 A I do understand that, yes.

18 Q Given by a Danish law firm?

19 A Yes, I understand that.

20 Q And you understand that in this
21 opinion on Page 5, that Danish firm is saying
22 that a United States pension fund should be
23 regarded as the beneficial owner of the
24 Danish dividend if it is not legally
25 obligated to pay any portion of the dividend

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 168

1 to any person?

2 MR. DEWEY: Objection.

3 A I understand that those words are
4 on the page. I don't have an interpretation
5 of those words beyond the conversations that
6 I had with Jerome Lhote, who, as I've
7 mentioned before, is himself an attorney, and
8 who represented to me that he coordinated the
9 advice with Danish counsel.

10 Q Did Mr. Lhote tell you how Danish
11 counsel could conclude that the pension fund
12 was the beneficial owner, even if it was
13 legally obligated to pay a portion of the
14 Danish dividend to someone else?

15 A As I mentioned earlier, I don't
16 recall the specifics of the conversation that
17 I had with Jerome Lhote. I remember that we
18 generally had conversations on this topic.

19 I'll stop there. Nothing further.

20 No further answer.

21 Q Is it your understanding that
22 Mr. Lhote obtained a different opinion from
23 some different Danish lawyer?

24 A Well, if I -- I'm not sure if I
25 understand your question correctly. Your

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 178

1 A I think, as you know, I am not a
2 Danish lawyer, so I can't speak to sources in
3 Danish law. I can say only that, at the
4 time, we spoke to -- I spoke with Jerome
5 Lhote who was, of course, an attorney
6 himself, a civil law attorney at that, who
7 represented to me that he had confirmed with
8 Danish counsel that the plans at the time
9 could make such a representation.

10 Today, you know, again, that would
11 be a point of Danish law that's beyond my
12 knowledge or expertise.

13 Q So are you then telling us you're
14 not aware of any source of law that says that
15 an agent or nominee can be a beneficial
16 owner?

17 MR. DEWEY: Asked and answered.

18 You can answer the question a third
19 time.

20 A Again, today, I'm not a -- I'm not
21 a Danish lawyer and I'm not familiar with
22 Danish law today. And at the time, we
23 relied -- I relied on and -- I relied on the
24 representations in this regard made to me by
25 Jerome Lhote.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 190

1 enough information to understand what this
2 means. This is lender's warranties.

3 I don't understand in the document
4 who the lender is. I don't know what the
5 words "full and legal and beneficial
6 ownership" mean in the context of this
7 document or its governing law, and in order
8 to do so, I would have to, again, read the
9 document from cover to cover, probably do
10 some research.

11 So I can't respond better.

12 Q With respect to your conversation
13 with Mr. Lhote that he had gotten advice from
14 Denmark about beneficial ownership, when did
15 you have that conversation with Mr. Lhote?

16 A I don't recall an exact date, but
17 it was certainly before -- as best as I can
18 remember, it was certainly before any reclaim
19 applications were submitted to the reclaim
20 agencies.

21 Q And how do you know that?

22 A Because I generally recall that the
23 onboarding documentation submitted to the
24 reclaim agencies asked that question. And it
25 was that -- the review of those documents, as

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 192

1 Lhote, and in part, Matthew Stein.

2 Q Sir, can you turn to Exhibit 4503?

3 MR. MAGUIRE: Mark 4503.

4 (Whereupon the above mentioned was
5 marked for Identification.)

6 A Yes, I have it here.

7 Q Do you recognize your signature on
8 this document?

9 A (Witness reviewing.)

10 This is not my signature on this
11 document.

12 Q Whose signature is this?

13 A The only person who was authorized
14 to sign my signature on these documents was
15 Peter Wells.

16 Q So do you recognize this was Peter
17 Wells writing in your signature?

18 A I don't recognize Peter Wells'
19 handwriting after all these years. As I
20 mentioned, the only person authorized to sign
21 these documents on my behalf was Peter Wells.

22 Q So do you have any reason today to
23 suppose that the signature here is anything
24 other than Peter Wells writing in per your
25 authority and signing for you?

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 193

1 A No, I do not have any reason to
2 believe that it's anyone other than Peter
3 Wells.

4 Q If we turn to the first page of the
5 document, sir?

6 A Yes.

7 Q This is a Denmark beneficial owner
8 declaration form.

9 Is that correct?

10 A It is.

11 Q And near the top of this page, does
12 this form identify the beneficial owner as
13 the Omineca Pension Plan?

14 A It does.

15 Q And below that, are there general
16 declarations that start, "I hereby declare
17 that?"

18 A I see that language, yes.

19 Q And Item C is, "I am entitled to
20 the receipt of the dividend income shown on
21 the books and records of the institution
22 through which the related securities are
23 held."

24 Do you see that?

25 A I do.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 201

1 Q This is a "Statement of Beneficial
2 Ownership and Beneficial Ownership
3 Questionnaire."

4 Is that correct?

5 A That is the title of the document.

6 Q And is that your signature on the
7 document, on the page ending Bates 1839?

8 A That is not my signature on the
9 document.

10 Q Is that a signature that you
11 believe Peter Wells put on the document?

12 A I believe that would be Peter
13 Wells' signature.

14 Q And that would be pursuant to your
15 authority?

16 A Yes, Peter Wells had my authority
17 to sign these documents.

18 Q So what generally did you tell --
19 how did you give Peter Wells that authority?

20 A As you will recall, there were a
21 number of plans and a fair number of
22 documents. And given my own schedule and
23 other obligations and travel, I couldn't
24 always be in the office to sign documents.

25 So I reviewed a number of the

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 218

1 here is our stab at 30 names for the LLCs. "

2 Do you see that?

3 A I do.

4 Q Did you participate with Mr. Wells
5 in coming up with any of these names?

6 A I did not.

7 Q For all of the plans that were set
8 up by these 30 LLCs, did they all use
9 Kaye Scholer's mailing address?

10 A I don't recall if all of them did.

11 I do generally recall a good number of them
12 did.

13 Q And how did you handle the mail
14 that came in to these plans?

15 A There was no special -- to the best
16 of my recollection, there was no special
17 arrangement for handling the mail. The mail
18 went to the mailroom and then it was directed
19 to the attorney or administrator who handled
20 the matter.

21 Q And who was that attorney or
22 administrator?

23 A Peter Wells and Amy Gregory, who
24 was one of the legal assistants who was
25 working on the file at the time.

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 237

1 you're submitting to Denmark are okay."

2 Q Do you recall, in substance,
3 communicating that view to your client group?

4 MR. DEWEY: Objection.

5 A I generally recall, in substance,
6 communicating the view to the client group
7 that the firm was comfortable. From a U.S.
8 tax pension regulatory perspective, the plans
9 were -- were the beneficial owners of the
10 Danish securities.

11 Q And outside of that U.S. tax and
12 regulatory boundary, with respect to the
13 representations that were made to the Danish
14 government, with respect to those
15 representations, did you ever tell your
16 former clients that you or your firm were
17 okay, or words to that effect, with making
18 those declarations to Denmark?

19 MR. DEWEY: Objection.

20 A As I think I might have mentioned
21 in the past, we -- neither me nor my firm
22 gave advice on non-U.S. law except to the
23 limited extent that we had some of our
24 German -- of our colleagues in our German
25 office provide some advice on German law

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 245

1 Mr. Markowitz meant when he said that the
2 accounts will be held by the plan "as agent
3 or nominee for partnership?"

4 A I don't recall this specific e-mail
5 exchange or any surrounding conversations,
6 and you would need to ask Mr. Markowitz what
7 he meant by that phrase.

8 Q As you've testified today, sir, is
9 it your testimony that you do not have an
10 understanding of what Mr. Markowitz was
11 referring to here as the plan acting "as
12 agent or nominee for the partnership?"

13 MR. DEWEY: Objection, asked and
14 answered.

15 A I'm saying that I do not recall
16 this e-mail exchange or the surrounding --
17 any surrounding conversation, if any. And I
18 can't say what I thought at the time of the
19 e-mail, and you would need to ask
20 Mr. Markowitz what he meant by that phrase.

21 Q Did you or your firm file FBARs for
22 the partnerships as well as the plans that
23 engaged in Danish trading?

24 A I don't recall specific entities
25 that we filed FBARs for, but I do recall

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 246

1 generally that we assisted the clients in
2 preparing any necessary FBAR filings.

3 Q And is it your understanding that
4 the partnerships filed FBAR filings because
5 the plans held their trading accounts as
6 agents or nominees for the partnerships?

7 MR. DEWEY: Objection.

8 A I don't recall the specific
9 entities that filed or did not file FBARs,
10 but it would make sense to me that the
11 partners, the partnerships filed FBARs
12 because mere signature authority over an
13 account outside the United States can trigger
14 an FBAR filing. In the context of the FBAR
15 rules, it's referred to as an economic
16 interest, very similar to beneficial
17 ownership, for FBAR filings.

18 Q So we discussed a little earlier
19 some individuals; Mr. Altbach, Mr. Lerner,
20 Mr. Zelman, Mr. Miller.

21 Do you recall that?

22 A I recall those names, yes.

23 Q Did you provide or your firm
24 provide any legal advice to any of those
25 individuals?

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 252

1 And I don't recall now what their
2 relationship was to Solo or what services
3 they were providing in the context of the
4 overall transaction.

5 Q When the custody services were
6 spread among these four custodians, the
7 parties who were no longer using Old Park
8 Lane had to enter into a new custody
9 agreement.

10 Do you recall that?

11 MR. DEWEY: Objection.

12 A I can't recall now any of the names
13 that you mentioned other than Telesto nor do
14 I recall one way or the other what their
15 activities were and roles were in relation to
16 the overall transaction.

17 Q Did you ever review the new custody
18 agreement for these custodians?

19 A I don't recall one way or the other
20 whether I looked at those custody agreements
21 or not.

22 Q Let me ask you to turn to Exhibit
23 1780?

24 A Yes, I have it.

25 Q You're not on this e-mail, sir, but

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 268

1 sophisticated generally in tax and tax
2 planning matters.

3 And we have clients such as these
4 who are extraordinarily sophisticated and
5 well-verses, you know, and who themselves
6 know as much or more than I do in many
7 respects.

8 So it's all over the map.

9 Q Sir, if you could turn to Exhibit
10 3111?

11 A Yes, I have that.

12 Q Is this an e-mail that
13 Mr. Markowitz sent to you on or about
14 September 4 of 2013?

15 A The first e-mail is. I just want
16 to read the chain.

17 (Witness reviewing.)

18 Yes. How can I help you?

19 Q Mr. Markowitz is responding to an
20 e-mail that you sent him on the same day in
21 which you say, "As I mentioned to Adam," and
22 after the parenthetical, it goes on to say,
23 "and while we still think the transactions
24 work, we don't think we can issue an opinion
25 that would be of real value."

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 269

1 Do you see that?

2 A I do.

3 Q Now, what did you mean by that?

4 A While I don't recall this specific
5 e-mail exchange, I do generally recall
6 clients' requests that the firm consider
7 issuing a formal tax opinion related to the
8 tax -- the U.S. tax aspects of the
9 transaction.

10 Q When you say "the U.S. tax
11 aspects," what tax aspects did they want the
12 opinion to address?

13 A I generally recall and believe that
14 they were looking for a list of questions to
15 be answered. And I can't remember the
16 specifics now, but I believe that some -- not
17 all, but some -- were addressed in -- excuse
18 me -- in the memo that we ultimately produced
19 for them.

20 Q Is that the memo that we looked at
21 earlier dealing with disqualified persons and
22 prohibited transactions?

23 A I believe so.

24 Q You say here, "We wanted to have a
25 call to explain our thinking."

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 309

1 Is that right?

2 A Yes.

3 Q As of March 31 of 2015?

4 A That's the date on the form.

5 Q If we turn to the page with the
6 Bates at the bottom 930?

7 A I have it.

8 Q There's a column on the right for
9 "Purchases and Sales of Foreign Securities?"

10 A Yes, I see that column.

11 Q And under that, for "Foreign
12 Equities?"

13 A Yes, I see that.

14 Q And under that, for "Sales?"

15 A Yes.

16 Q And for the United Kingdom, the
17 plan discloses sales of \$596 million.

18 Is that correct?

19 A Yes.

20 Q Then, if we go to the page with the
21 Bates at the bottom 937, it records a grand
22 total in terms of sales of foreign equities
23 of \$596 million?

24 A Yes, I see that.

25 Q What was the threshold for filing a

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 310

1 Form S?

2 A I do not now recall the specific
3 trading volume or value thresholds for the
4 various Federal Reserve forms, of which this
5 is one.

6 Q Sir, if you could turn to Exhibit
7 2224?

8 A Okay. I have it.

9 Q Is this an e-mail from
10 Mr. Markowitz on which you were copied from
11 April 9 of 2015?

12 A It is.

13 Q Mr. Markowitz says in the e-mail,
14 "Peter, here are the securities bought or
15 sold by the 40 pension plans as of March 31,
16 2015 for Form S." He goes on to say, "As you
17 can see in the report, all exceeded
18 \$350 million."

19 Do you see that?

20 A I do.

21 Q And if you turn to the next page,
22 you see the list of the 40 plans?

23 A Yes.

24 Q And all of the amounts exceed --
25 actually, all of the amounts exceed

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 311

1 \$500 million.

2 Do you see that?

3 A I do.

4 Q So for these 40 plans, the total
5 value of securities here is in excess of
6 \$20 billion?

7 A I can't do the math that fast. I'm
8 not going to attempt to tally this now.

9 Q It's a lot of money.

10 MR. DEWEY: Objection.

11 Q Did you have an understanding as to
12 how these 40 plans were able to buy -- each
13 of them -- hundreds of millions of dollars of
14 Danish securities?

15 A I understood generally that the
16 plans borrowed the money, financed the money,
17 to make the purchases.

18 Q Did you understand that these were
19 all new plans?

20 MR. DEWEY: Objection.

21 A Well, I haven't -- I haven't
22 memorized the names of all the plans that
23 were created. I don't know which on these
24 lists were new and which were not.

25 Q Did you not understand that the

CONFIDENTIAL
Michael Ben-Jacob - October 11, 2021

Page 314

1 the client group had with their various
2 financial institutions.

3 Q Did you ever ask anyone to explain
4 how a new plan with no more contributions
5 than the maximum permitted contribution of
6 \$23,000 could afford to buy over \$500 million
7 of Danish securities?

8 MR. DEWEY: Objection.

9 A I vaguely understood that they
10 could afford to buy the securities that were
11 traded because financial institutions agreed
12 to lend them or otherwise finance the money.

13 Q And in this case, the financial
14 institution that was providing the money was
15 Solo or a party related to Solo.

16 Is that right?

17 MR. DEWEY: Objection.

18 A I don't have a recollection what
19 financial institution actually provided the
20 money as opposed to facilitated, you know,
21 obtaining the money. Again, neither I nor,
22 to the best of my knowledge, anyone in my
23 firm were involved in anything but providing
24 the legal -- the U.S. legal advice related to
25 tax, pensions, and some regulatory matters.

CONFIDENTIAL
Michael Ben-Jacob - October 12, 2021

Page 399

1 or not.

2 Q Do you recall the firm ever
3 advising you that representing Mr. Rivera
4 would cause an unwaivable business conflict?

5 A I don't recall Mr. Rivera nor his
6 name, nor what inquiries he made of me or my
7 firm, one way or the other, if he made any,
8 or whether or not the firm indicated that
9 representing Mr. Rivera would be a business
10 conflict.

11 Q Sir, if you could turn to Exhibit
12 3112.

13 A I have that e-mail here.
14 I will read it. Give me a moment,
15 please.

16 (Witness reviewing.)

17 I have briefly read through the
18 exhibit.

19 What is your question, please?

20 Q Is this an e-mail on which you were
21 copied from Mr. Van Merkensteijn on or about
22 July 8, 2014?

23 A Yes. The first page of the exhibit
24 references such an e-mail.

25 Q And at the bottom of the first

CONFIDENTIAL
Michael Ben-Jacob - October 12, 2021

Page 400

1 page, there's an e-mail from Mr. Wells to
2 Mr. Van Merkensteijn. Right?

3 A When you say "the first page" --
4 oh, I see -- yes, I see that, July 18, 2014
5 at 8:50 a.m.

6 Q I think it's July 8?

7 A I'm sorry. Yes, July 8, 2014.

8 Q Mr. Wells says, "John, after
9 further internal discussion and considering
10 the issues at play, further we confirm that
11 we do not recommend the co-trustee route
12 given the risk of a potential prohibited
13 transaction, notwithstanding Rich's
14 additional comments."

15 Do you see that?

16 A I see those words, yes.

17 Q And Mr. Wells says that "Between
18 the two suggested alternatives, the
19 authorized trader approach is preferred."

20 Now, how was this issue resolved?

21 A I don't have a recollection of this
22 e-mail exchange nor conversations surrounding
23 this e-mail exchange nor what the specific
24 issues were.

25 I simply note that, as you go

CONFIDENTIAL
Michael Ben-Jacob - October 12, 2021

Page 401

1 through the exhibit, the appropriate subject
2 matter experts, Kathleen Wechter is
3 referenced here with respect to issues
4 touching on the pension plans, and I believe
5 I saw a reference here as well to Steve
6 Calahane on regulatory matters, yes.

7 So I -- I can't recall other than
8 to say that the appropriate attorneys with
9 expertise were consulted.

10 Q Now, if you turn to the second
11 page, there's a reference, I believe you
12 mentioned, to a Mr. Calahane, and
13 specifically that's in the last paragraph on
14 the page, the paragraph that starts with
15 "Respect to the professional investor issue."

16 A I'm sorry. When you -- what is the
17 Bates number on your page?

18 Q Bates number 923.

19 A Yes, I have that.

20 Q And the second sentence says,
21 "Steven favors the co-trustee approach and
22 did not believe that it would implicate any
23 of the investment advisor issues.
24 Conversely, he raised concern with having
25 John or Rich appointed as authorized trader

CONFIDENTIAL
Michael Ben-Jacob - October 12, 2021

Page 402

1 or agent with investment discretion."

2 Do you see that?

3 A I do.

4 Q How was Mr. Calahane's concern
5 about the "authorized traitor or agent"
6 resolved?

7 A As I think I mentioned, I don't
8 have a recollection of this e-mail exchange
9 nor the issues that were raised in the e-mail
10 nor any related surrounding conversations,
11 and I don't recall how those issues were
12 resolved other than to say that they were
13 referred to the appropriate attorneys.

14 Q You had mentioned the Duet
15 transaction or Duet people yesterday.

16 Do you recall that?

17 A I recall that we made mention of an
18 organization called Duet.

19 Q And do you recall in the
20 transactions that the Duet organization
21 supported how much your former clients would
22 have had to put down to participate in the
23 transaction?

24 MR. DEWEY: Objection.

25 A I don't recall the specifics of the